IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 317 of 2001
(Old No. 2150 of 1985)

Bhuri S/o Bhaguni Das
R/o Villge Phaldwari,
Police Station Patti Bali Kandarsyun,
District Pauri Garhwal.

…….. Appellant

Versus

The State …….. Respondent

Ms. Nanak Chand Gupta, Advocate for the appellant.
Mr. Nandan Arya, A.G.A. for the respondent State.

Hon'ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 08.08.1985, passed in Sessions Trial No. 13 of 1985, by learned Sessions Judge, Pauri Garhwal, whereby appellant Bhuri has been convicted under Section 376 and 454 of the Indian Penal Code, 1860 (for brevity hereinafter referred as I.P.C.). The appellant has been sentenced, by the trial court to rigorous imprisonment for a period of five years, under Section 376 of I.P.C., and rigorous imprisonment for a period of one year, under Section 454 of I.P.C.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 04.03.1985, at about 10:00 P.M., P.W. 1 Smt. Lajju Devi was sleeping in her room in village Phaldwari, Patti Bali Kandarsyun,

District Pauri Garhwal. Her husand was in Chandigarh in connection with his job. Her father-in-law had also gone away to village Mankuli. Her two minor brothers-in-law (DEVARS) were in the house, in another room. Finding an opportunity, accused/appellant Bhuri, who is neighbour of the victim trespassed in her hose and commited rape on her. It is alleged by the victim that she was subjected to rape on the point of knife. After committing rape accused / appellant is said to have taken away a 'NATH' (big nose ring of gold). Next morning, when the victim's father-in-law returned back to the village, she narrated the entire incicent and accompanied him to Patwari Chowky, Bali Kandarsyun, to lodge the First Information Report, but the Patwari was not available at the headquarters. (In Uttaranchal hills, in certain areas, revenue officers are given police powers). Thereafter, father-in-law and daughter-in-law, went to a laywer to get a complaint drafted and presented the same on 06.03.1985, before the Munsif / Judicial Magistrate, Pauri, who in turn directed the complaint to be investigated by the Patwari. Accordingly, First Information Report (Ext. A –1) was registered by the Patwari, and the crime was investigated. The victim was taken to the Hospital for medical examination, on 09.03.1985, where she was examined at 10:00 A.M. On completion of investigation, P.W. 4 Mansha Lal, Patwari, filed charge sheet against the accused Bhuri, for his trial in connection with the offence punishable under Section 376, 354, 457, 506 of I.P.C.

4) However, the trial court, after hearing the prosecution and the defence, found that only the charge in respect of offence punishable under Section 376 and 454 of I.P.C., are

made out, and framed the charge accordingly. As such, accused / appellant stood discharged from the rest of the offences. The accused / appellant pleaded not guilty in respect of the charge framed against him punishable under Section 376 and 454 of I.P.C. On this prosecution got examined P.W. 1 Smt. Lajju Devi (victim); P.W. 2 Hira Lal (father-in-law of the victim), P.W. 3 Mohan Lal (another relative of the victim) and P.W. 4 Mansha Lal (Investigating Officer). Relating to medical reports, the defence admitted the genuineness of the documents as there was no opinion as to the commission of rape, in said reports. All the oral as well as documentary evidence was put to the acussed, as required under Section 313 of Cr.P.C., in reply to which the accused alleged it to be false. After hearing the parries, learned Sessions Judge found the accused Bhuri guilty of offences punishable under Section 376 and 454 of I.P.C., and after hearing on sentence, sentenced him to rigorous imprisonment for a period of five years under Section 376 of I.P.C., and to rigorous imprisonment for a period of one year under Section 454 of I.P.C. Aggrieved by said judgment and order dated 08.08.1985, the convict preferred this appeal before the Allahabad High Court in the year 1985, from where it has been received by transfer tot his Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) P.W. 1 Smt. Lajju Devi (victim) has stated that, on 04.03.1985, she was sleeping in her house, when at about 10:00 P.M., accused / appellant Bhuri entered in her house. She has clarified that there was no bolt to close the door from inside. P.W. 1 Smt. Lajju Devi has further stated that her husband works at Chandigarh, and in that night her

father-in-law, has gone to village Mankuli. The witness has further stated that the accused appellant forcibly committed sexual intercourse with her against her will. The victim further states that she wanted to raise alarm, but Bhuri showing a knife to her, threatened her that she would be killed, if she dared to raise the alarm. P.W. 1 Smt. Lajju Devi narrating the prosecution story, further states that after the accused left her room, she started sobbing. Thereafter, she went to Mohan Lal, P.W. 3, who was her father-in-law's brother. He (Mohan Lal) along with Mahima Nand, another relative, then came to her house and they sent their children to stay with her in the night. The witness further states that at about 8:00 A.M., in the next morning her father-in-law (Hira Lal) came back to the village and she narrated entire story to him. On this, she along with her father-in-law went to the Patwari, but the Patwari was not available at his Headquarters.

6) The above statement of P.W. 1 Smt. Lajju Devi is corroborated by the statement of P.W. Hira Lal, a 70 years old man (father-in-law of the victim). He has stated that he has gone to village Mankuli in the night of incident. Next morning when he came back, his daughter-in-law narrated him the trauma, she had undergone that night. The witness (P.W. 2 Hira Lal) further states that he took his daughter-in-law to lodge the report, but the Patwari was not found available in his Headquarters.

7) P.W. 3 Mohan Lal, who is brother of Hira Lal has narrated the fact that on 04.03.1985, Lajju Devi cried for help after the incident. The witness further states that he came out and went to her. He further states that he made attempts to apprehend Bhuri, but he was no traceable. P.W.

3 Mohan Lal further states that he and Mahima Nand, then sent their children to Lajju Devi's house, for her protection. The witness has clarified that Mahima Nand is stepbrother-in-law of the victim, who also lives in the neighbourhood.

8) Statements of the above three witnesses fully prove the prosecution story beyond all reasonable doubt that accused Bhuri, On 04.03.1985, at about 10:00 P.M., committed lurking house trespass by entering in the room of Smt. Lajju Devi, and thereafter, committed rape on her. The medical examination report of the victim is of no help in this case, in which it has been mentioned that the patient is used to sexual intercourse, and that is not a material one to either party, as the victim was a married woman.

9) On behalf of the appellant, it is argued that the allegations of robbery and rape were made against the accused due to enmity. But it is not clarified what was the enmity of young woman of seventeen years, with the accused, for which she would drag his name to such an incident. As far as the robbery is concerned, there is no charge framed against the accused, nor is the appellant found guilty of said charge. But, as far as the commission of rape, after lurking house trespass in the house of the victim is concerned, to that extent prosecution story stood established, and the trial court rightly convicted the accused / appellant of the charge of the offences punishable under Section 376 and 454 of I.P.C.

10) It is also argued on behalf of the appellant that no woman would keep the doors of her house open at night to facilitate someone to enter in her house. The facts and circumstances of the case show that it is a case of poor

village woman. She has examined in her statement that in her house in the village there is no bolt from inside and she used to sleep by keeping the doors closed, without any bolt. Considering the village conditions, there is nothing in her statement on this point, which makes her statement doubtful.

11) It is also contended on behalf of the appellant that the prosecution story is exaggerated one and should not be believed, as the source of light has been admitted to be introduced by projecting that the victim lighted lantern, at the time when offence was committed. That part of exaggeration in prosecution story has already been disbelieved by the trial court. I agree with the learned trial court, that merely for the exaggeration, the ring of the truth cannot be ignored. Though, the complaint was got drafted by an Advocate and it is possible that it might have been added a couple of facts to improve her story, but the fact remains that there is no reason to doubt, as far as her statement relating to commission of rape by the accused, after committing lurking houses trespass, is concerned.

12) For the reasons as discussed above, this appeal has no force and the same is liable to be dismissed. The appeal is dismissed. The conviction and sentence awarded against the accused is maintained. Accused / appellant Bhuri is on bail. His bail is cancelled. The court concerned shall take him into custody forthwith, to make him serve out the remaining part of the sentence, awarded against him.

(Prafulla C. Pant, J.)

Dt. November 06, 2006.
H. Negi